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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/778,470

02/07/2001

Cheree L. B. Stevens

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/778,470	Applicant(s) STEVENS ET AL.	
	Examiner Lien T. Tran	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 111 and 125-142 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 111, 125-142 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 128-142 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 9/12/07, applicant submits new claims 128-142; these claims recites a coating composition consists of the ingredients specified in the claims. These claims do not have support in the original disclosure. A coating composition as now claimed is not disclosed in the specification. For example, claim 128 recites a coating composition consists of at least one stabilizing agent, at least one leavening agent. Even taking into consideration that in the formula disclosed on page 10, the xanthan gum is the stabilizing agent, there is no disclosure of more than one stabilizing agent. At least one includes one and more. There is no disclosure "at least one color agent component". There is no disclosure that the composition only consist of the ingredients now claimed.

Claims 111, 125-127 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Baur et al (WO 94/21143)

Baur et al disclose a coating composition comprising wheat flour, modified corn starch or modified potato-based starch, rice or corn flour, dextrin, gum, leavening agent and calcium salts. The amount of wheat flour is from about 5-50%. The amount of corn or potato starch is in the range of 5-50%. The rice or corn flour is used in the range of 2-50%. Dextrin is used in amount of about 2-20%. Leavening agents are used in

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amount of .1-2.5 for sodium bicarbonate and .1-3.5% for leavening acids such as sodium acid pyrophosphate. Calcium sat is used in amount of .1-1.5%. Gum, such as xanthan gum or methylcellulose, is used in amount of .1-5%. The dextrin used includes corn dextrin, rice dextrin or a tapioca dextrin. The composition also includes about 2-20% protein such as whey protein. The composition can be used in any food substrate which can be coated and frozen or coated, cooked, frozen or chilled and subsequently reheated or fully cooked by frying, baking or microwaving. The potential substrates include vegetables such as potato. After the substrate is coated, it may be chilled, frozen or par or fully cooked. The dry mixture of the components of the composition are mixed with water in the weight ration of 10 parts solids to 7-20 parts water. As an alternative procedure, the dry mixture of components can be applied in dry form to a moist substrate surface. The coated French fries product exhibit similar textural properties as before exposure to the lamp after standing form 15-30 minutes under standard restaurant infrared heating lamps. (page 3, table 1, page 5 lines 6-35, page 6 lines 8-20, page 8 , page 9 lines 6-26 and the examples)

Baur et al disclose all the limitations of the cited claims. Since the composition include modified potato starch or corn starch, rice flour or corn flour, Baur et al disclose embodiment in which the composition includes modified potato starch and rice flour. The amounts of rice flour and dextrin falls with the ranges claimed; thus, it is inherent the ratio also falls within the ranges claimed. However, if it is not inherent, it would have been obvious to one skilled in the art to select various ratios within the range of flour and dextrin disclosed by the reference depending on the type of coating and properties

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wanted. For example, it would have been obvious to use equal proportion of dextrin and flour, a ratio of 1:1 if one wants equal contribution of properties from both component of rice flour and dextrin.

Claims 111, 125-142 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogols et al (6022569).

Rogols et al disclose a process for preparing a starch coated potato product and a coating composition for coating the potato substrate. The coating composition comprises not less than 50% rice flour, ungelatinized starch selected from a group including modified potato starch. Optional ingredients including maltodextrin, dextrin, microcrystalline cellulose, hydrocolloid can also be added. Leavening agents are also added and optional ingredients such as salt, coloring agents are added. The process comprises the steps of applying a slurry of the coating compositions to potato strips and cooking the coated strips. (see col. 2 lines 50-60, col. 3 lines 8-10, lines 49-64, col. 5, col. 7 lines 5-9)

Rogols et al do not specifically disclose the ratio of rice to dextrin as claimed and the specific composition consisting of the components as claimed.

Both the rice flour and the dextrin component are disclosed in Rogols et al as providing crispness to the product. Thus, it would have been obvious to one skilled in the art to form a coating composition having proportional amount of rice flour and dextrin to obtain desired crispness. The determination of such amount can readily be determined through routine experimentation. For example, if a high amount of rice flour is used. It would have been obvious to use a proportionally less amount of dextrin.

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Table 7 on column 11 shows that various amounts of dextrin can be used in conjunction with rice flour at different ratios. Example 7I shows a ratio within the range claimed. Table 8 also shows various ratio of rice flour and dextrin. The reference shows that the ratio of rice flour to dextrin can also vary depending on the cross-linking of the potato starch. Thus, it would have been within the skill of one in the art to determine the appropriate amounts of rice flour and dextrin to obtain the most optimum crispness. Rogols et al disclose a coating composition containing all the components recited in the claimed composition. It would have been obvious to omit some of these components at time depending on the properties wanted. For example, it would have been obvious to omit the coloring agents if a colorless composition is wanted. It would also have been obvious to add a flavoring such as sugar when a sweetened composition is wanted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 8, 2007

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700